



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: A&B Management

File: B-231427

Date: September 1, 1988

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### DIGEST

Department of Housing and Urban Development (HUD) did not act improperly in awarding contract to a second vendor for management services for HUD properties in Kern County, California, even though protester had a contract to provide the same services; under the terms of the protester's contract, the agency was entitled to limit the number of properties assigned to it and to award another contract for properties in excess of that number.

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### DECISION

A&B Management protests the award of a contract to Gannon Realty Management under invitation for bids (IFB) No. 87-3-01, issued by the Department of Housing and Urban Development (HUD) for area management broker services for HUD-owned or administered properties in Kern County, California. A&B contends that Gannon should not have received the award since the protester was the awardee under a preceding solicitation for the same services and, in its view, that contract provided that it would service all HUD properties in Kern County. We deny the protest.

HUD issued IFB No. 87-2-04 for management services for HUD properties in Kern County on August 10, 1987. The services to be performed included appraising the properties, inspecting and cleaning them, arranging for repairs, administering leases, and assisting in sales. The IFB called for bids based on the monthly price per unit.

The IFB provided that the properties to be serviced would be designated in a list to be provided to the contractor on the contract start date and stated that "[n]o more than 100 properties are anticipated to be managed under this contract in any given month."

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The solicitation provided that the "Approx. No. of Properties" owned by HUD in Kern County was 150.<sup>1/</sup> The IFB also reserved to HUD the right to:

"Exclude from this contract any group of properties which may be acquired within the area and for which it would be advantageous to form a separate project under a separate contract."

Two bidders, A&B and Area Management, responded to the solicitation; of the two, A&B's monthly per unit price of \$67.00 was lower. HUD rejected both bids as nonresponsive, and on November 11 issued a second solicitation, IFB No. 87-3-01, for the same services and containing essentially the same terms as the prior solicitation, with a bid opening date of December 15. Again two bidders responded: Sacramento Realty Property Management, which is owned by the owner of A&B, and Gannon Realty Management, which is owned by the owner of Area Management. Gannon's bid of \$56.75 was the lower of the two.

Prior to issuance of the second solicitation, A&B protested to the agency the rejection of its bid as nonresponsive. On December 19, the protest was sustained. The contracting officer then determined that A&B was nonresponsive, and on February 16, 1988, referred the matter to the Small Business Administration (SBA) for possible issuance of a Certificate of Competency (COC). On March 29, SBA certified that A&B was responsible.

The contracting officer determined that since it was HUD policy generally to limit the inventories under area management broker services contracts to 100 homes, and since the inventory for Kern County had increased to approximately 270 homes by April 1988, she would award two contracts, one to A&B under the first IFB and the other to Gannon under the second IFB. HUD assigned approximately 100 properties to each contract; in addition, it modified Gannon's contract to encompass Cimarron Gardens, a 70 unit apartment project, which required primarily rent collection services rather than the full complement of management services. The agency explains that it incorporated the Cimarron Gardens project into Gannon's contract because that firm was the incumbent

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<sup>1/</sup> At the prebid conference on August 26, 1987 HUD indicated that its "inventory" for Kern County had increased to 235 properties. Since it appears that properties come into HUD's possession and are later sold, the number of properties in HUD's possession is constantly in flux.

contractor for the rental management services and the agency did not expect the project to remain in its inventory much longer.

A&B objects to the Gannon contract, contending that it was the proper awardee under the initial solicitation and that its contract covers the services for all HUD properties within Kern County. In the alternative, the protester argues that if its award is to be limited to 100 properties, then Gannon's award should also be limited to 100. The agency argues in response that the initial IFB provided that the awardee was entitled to service only 100 properties and that it was therefore appropriate for it to limit the award to A&B to this number of properties and to award a separate contract for the additional properties to Gannon.

It is our view that HUD was entitled under the terms of the contract awarded to A&B pursuant to the initial IFB to limit the number of properties to be serviced under that contract to 100 units. The IFB explicitly reserved to HUD the right to exclude from the contract any group of properties for which it would be advantageous to award a separate contract. HUD determined that it would be in the agency's best interest to exclude from A&B's contract properties in excess of 100 based on its experience that service contractors generally performed more effectively and efficiently where inventories were so restricted.<sup>2/</sup> Moreover, since both Gannon and A&B's owner submitted bids under the second solicitation for the same services and Gannon submitted the low bid--which was also lower than the award price under the initial solicitation--we do not believe that the protester can complain that it, rather than Gannon, should have been given the Cimarron Gardens units.

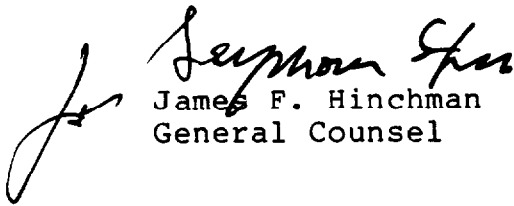
A&B further argues, however, that if it was HUD's policy to restrict contractors to 100 properties, then the inclusion in Gannon's contract of a total of 170 properties was inappropriate. We agree with the protester that HUD's addition of the 70 properties to Gannon's contract seems to be inconsistent with its policy of limiting these service contracts to 100 properties. Nevertheless, while the contracts state that HUD does not "anticipate" that more than 100 properties per month will be serviced and reserve

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<sup>2/</sup> HUD's policy generally limiting these service contracts to 100 units per firm does not prohibit the incumbent from competing under a solicitation for the additional units, but states that if the incumbent wins the competition, its capacity to service the additional units will be carefully examined during the responsibility determination.

to HUD the right to exclude properties, they do not prevent the agency from including more than 100 properties in a particular contract. As long as the additional properties are in the designated area, the terms of the contract permit them to be added. As far as HUD's policy of limiting such contracts to 100 units is concerned, it was not made a term of the contracts and it does not appear to have been established as an absolute prohibition against a single contractor servicing more than 100 units under any circumstances. Here, the record shows that the management services were required immediately and it was anticipated that they would be needed for only a very brief period of time. Because time was of the essence, we think that the agency's decision not to issue a separate solicitation for the services for Cimarron Gardens was reasonable. Further, it was in our view reasonable for HUD to have elected to include the additional units in Gannon's contract rather than in A&B's contract since Gannon was the incumbent contractor for the services and, as stated above, was less costly.

The protest is denied.



James F. Hinchman  
General Counsel